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May 30, 2013

*Via email & Federal Express*

Michael A. Mintzer, Esq.  
Assistant Regional Counsel  
Environmental Protection Agency, Region 2  
290 Broadway, 17th Floor  
New York, NY 10007-1866

Re: Newtown Creek Superfund Site  
Request for Information  
Pebble Lane Associates, Inc.

Dear Mr. Mintzer:

Enclosed please find a copy of the Responses to the U.S. Environmental Protection Agency's Request for Information, above-referenced, from our clients Pebble Lane Associates, Inc. and Messrs Emilio & Sabatino Lamanna. Please note that although our clients have been able to provide some answers and documents responsive to the said request, they are still reviewing their files to locate other responsive documents. We expect to be able to supplement the filing with items.

Respectfully submitted,

Sullivan Gardner PC

  
Peter Sullivan

Enclosure

NEWTOWN CREEK SUPERFUND SITE  
RESPONSE TO REQUEST FOR INFORMATION PURSUANT TO THE  
COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND  
LIABILITY ACT, 43 U.S.C. §§ 9601-9675

**Maspeth Avenue LLC, Pebble Lane Associates, Emilio & Sabatino Lamanna**

RESPONSES TO REQUEST FOR INFORMATION

**I. GENERAL OBJECTIONS**

1. Pebble Lane Associates, Emilio & Sabatino Lamanna jointly and severally (collectively “Companies” or “Respondents”), object to each request (“Request(s)”) for information contained in the letter, dated March 20, 2013, from the Office of Regional Counsel of the United States Environmental Protection Agency (“EPA”) to Maspeth Avenue LLC, Pebble Lane Associates, Emilio & Sabatino Lamanna to the extent that it seeks to impose requirements or obligations greater than those provided under Section 104(E) of CERCLA, 42 U.S.C. § 104(E).

2. Respondents object to each Request to the extent that it may seek information which is protected by the attorney-client privilege or any other applicable privilege or doctrine.

3. Respondents object to each Request to the extent it seeks information and documents already within the possession, custody, or control of the United States Environmental Protection Agency (hereinafter, “Agency”), or any governmental entity affiliated or associated with the Agency.

4. Respondents object to each Request to the extent it seeks information not within Respondents’ possession, custody, or control.

5. Respondents object to each Request to the extent it may be overly broad and burdensome, vague, seeking matter not material and necessary, and seeking responses from entities that are not a party to this action.

6. Respondents object to each Request to the extent it seeks identification or production of material and documents available as a matter of public record.

7. Respondents reserve the rights to correct errors, interpose supplemental objections, and provide supplemental answers, should additional information or documents responsive to these requests be discovered.

8. In responding to these Requests, in the event of any legal or administrative proceeding, Respondents expressly reserve their right to object to the admission into evidence of any and all information made available in response to any

Request on any ground.

## **II. RESPONSES**

All Responses provided herein are derived from a review of files, which is ongoing. At this early stage, all Responses are made upon information and belief and subject to the objections and reservations set forth herein.

### **Section 1.0 Company Information**

#### **1. Company Identification.**

Maspeth Avenue LLC

- a. Unknown entity

Pebble Lane Associates Inc.

- a. Filed in New York State in 1993
- b. Name was changed to PLA Lamanna, Inc.
- c. Assets sold in 2009 and is now a non-operating company
- d. President: Mary Jean Lamanna

Pebble Lane Holdings LLC

- a. Unknown entity

Brookville Enterprises, Inc.

- a. A sales/receivables company operated in the office on the property
- b. President: Rossana Bartone
- c. Non-operating

Alfredo Lamanna Trucking Inc.

- d. A trucking company, filed 1972, that ceased operation prior to occupancy of property
- e. President: Alfredo Lamanna
- f. Non-operating

Island Transportation Corp.

- a. An unrelated former owner and lessor of a portion of the relevant property

#### **2. Future EPA Communications:**

Sullivan Gardner PC

7 East 20<sup>th</sup> Street

New York, New York 10003

(212) 687-5900

## **Section 2.0 Owner/Operator Information of the Facility and Newtown Creek**

### **3. Companies' Relationship to the Facility.**

Maspeth Avenue LLC

- a. Unknown entity

Pebble Lane Associates Inc.

- a. Operated a fill material transfer station on a portion of the property from 1998 through 2009

Emilio Lamanna

- a. Owner of a portion of the property

Sabatino Lamanna

- a. Owner of a portion of the property

Brookville Enterprises, Inc.

- a. A sales/receivables company operated in the office on the property
- b. Non-operating company

Alfredo Lamanna Trucking Inc.

- a. Did not operate on the property
- b. Non-operating company
- c. merged into Almar Supplies, Inc.

Almar Supplies, Inc.

- a. Operated a trucking company out of the building on the property
- b. President, Rosanna Bortone

Island Transportation Corp.

- a. An unrelated former owner and lessor of a portion of the relevant property

### **4. Operations at the Facility.**

- a. The property was operated as a fill material transfer station and office use.
- b. Pebble Lane Associates, Inc. operated a fill material transfer station that received and re-sized clean fill (stone, brick, dirt etc.).
- c. Vehicles were on occasion parked and maintained on the property by a related third party entity. Vehicles were fueled by un-related third party fuel suppliers from tanker truck.
- d. All activity on the property by Respondents ceased upon the sale of the assets of Pebble Lane Associates, Inc. in 2009.

- e. Maintenance was done inside the garage in the main building. (Archived plans are being sought).
- f. The Respondents did not use trade names or fictitious names in the conduct of business at the property.

5. & 6. Facility Plan and Historic Maps, Drawings, Surveys and Photographs of the

- a. A Facility and Historic Plan are being sought and/or prepared.

7. Ownership of Newtown Creek. Respondents are unaware of any ownership interest or control of Newtown Creek by Respondents.
8. Operations in Newtown Creek. Respondents did not engage in any activity over, on, under or adjacent to Newtown Creek. Respondents have not constructed, operated or utilized any facility under the waters or sediments of Newtown Creek.
9. Bank Erosion, Overland Transport And Overwater Activities At Or From the Facility to Newtown Creek.
- a. Respondents did not engage in any activity related to bank stabilization on Newtown Creek. Respondents have not constructed, operated or utilized any facility under the waters or sediments of Newtown Creek. Respondents are not aware of any bank erosion. The existing concrete structure was pre-existing and does not require maintenance. Respondents are unaware of any weep holes or gaps or openings in bulkheads or shoreline stabilization systems.
  - b. There are no bulkheads or bank stabilization systems and therefore there are no documents related thereto.
  - c. Respondents do not understand what is requested concerning documents and information pertaining to any characterization of discharge source pathways.
10. Outfalls into Newtown Creek. Respondents are unaware of any outfalls or discharge points from the property into Newtown Creek.
11. Fill and Land Filling Activities.
- a. Respondents have not filled the property.
  - b. Pebble Lane Associates, Inc. operated a fill material transfer station that accepted recognizable, clean dirt, stone, and other materials permitted to be received by a fill material transfer station.
12. Facility Storm Water Drainage. All storm water is retained on site in the fill piles

and three retention tanks.

13. Facility Process Water Management. Respondents are in the process of obtaining the information necessary to accurately answer the questions concerning waste water streams. Comprehensive answers will be provided upon obtaining the said information.
14. Connections to New York City sewer system. Respondents are in the process of obtaining the information necessary to accurately answer the questions concerning connections to New York City sewer systems. Comprehensive answers will be provided upon obtaining the said information.
15. Other Newtown Creek Properties. None.
16. Storage and Combustion of Coal. No.
17. Historic Ownership and Operation of the Facility. Island Transportation Corp. operated a fuel oil distributorship.
18. Vessels. No.
19. Vehicles. Payloaders were utilized by Pebble Lane Associates, Inc. to handle the fill material inventory. The payloaders were serviced in the garage in the building on the property. Permits were not required.
20. Bulk Storage Containers. Below ground 4,000 gal. fiberglass reinforced plastic bulk storage tank for petroleum.
21. Chemicals and Other Materials Used, Produced and Generated at the Facility. Other than diesel fuel and products typical of vehicle maintenance and office cleaning, Respondents are unaware of any compounds and chemicals received, stored and used at the property.
22. Oil/Water Separators. None
23. Pipelines. Unaware of any.
24. N/A
25. Civil Litigation. Administrative Enforcement and Criminal Matters:
  - a. See DEC complaint, annexed as Exhibit "A", concerning the falling of a

- single 3'x3'x6' concrete block into the Newtown Creek for less than 48 hours.
  - b. See DEC complaint, annexed as Exhibit "A", concerning the falling of a single 3'x3'x6' concrete block into the Newtown Creek for less than 48 hours.
  - c. No.
- 26. Releases at or from the Facility. No.
- 27. Soil Removal Actions. No.
- 28. Groundwater Action. No.
- 29. Sediments. No.
- 30. Releases into Subsurface units. No.
- 31. Releases to Newtown Creek. See DEC complaint, annexed as Exhibit "A", concerning the falling of a single 3'x3'x6' concrete block into the Newtown Creek for less than 48 hours.
- 32. Environmental Investigations at the Facility. N/A
- 33. Monitoring Wells. None.
- 34. Phase I. Phase II. EDR and Other Environmental Investigations.  
Respondents are searching their records to locate any such reports.
- 35. Regulatory Agencies with Jurisdiction Over the Facility.
  - US EPA
  - NYS Dept. Environmental Conservation, Region 3 Regional Engineer
  - NYC Dept. of Sanitation, Permit & Inspection Unit
  - NYC Dept. of Env. Protection
- 36. Notices of Violation. See DEC complaint, annexed as Exhibit "A", concerning the falling of a single 3'x3'x6' concrete block into the Newtown Creek for less than 48 hours.
- 37. Air Emissions. N/A
- 38. Environmental Permits.
  - a. N/A
  - b. See Exhibit "B".
  - c. N/A
  - d. N/A
  - e. Respondents are in the process of obtaining the information necessary to

accurately answer the question concerning SPDES. Comprehensive answers will be provided upon obtaining the said information.

39. Persons Having Responsibility for Environmental Matters at the Facility. N/A
40. Insurance and Indemnification:
  - a. See Exhibit "C".



CERTIFICATION OF ANSWERS TO  
REQUEST FOR INFORMATION  
NEWTOWN CREEK SUPERFUND SITE

STATE OF NEW YORK     }  
                                      } ss:  
COUNTY OF NEW YORK   }

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (response to EPA Request for Information) and all documents submitted herewith, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted herewith are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that the Companies are under a continuing obligation to supplement its response to EPA's Request for Information if any additional information relevant to the matters addressed in EPA's Request for Information or my Companies' response thereto should become known or available to the Companies.

Pebble Lane Associates, Inc.

Vice President, Emilio Lamanna

Sworn to before me this  
29<sup>th</sup> day of May, 2013

Notary Public



**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Alleged Violation of Articles  
15, 17, 25 and 27 of the New York State  
Environmental Conservation Law and Parts 360,  
608, 661 and 750 of Title 6 of the Official  
Compilation of Codes, Rules and Regulations of the  
State of New York

-by-

**PEBBLE LANE ASSOCIATES, INC.**

and

**EMILIO LAMANNA** personally and as corporate  
officer of Pebble Lane Associates, Inc.

and

**MARY JEAN LAMANNA** personally and as  
corporate executive officer of Pebble Lane  
Associates, Inc.

and

**TOMMY BROWN.**

and

**ROSSANA BARTONE** personally and as  
corporate officer of Pebble Lane Associates, Inc.

and

**57-00 MASPETH AVENUE, LLC**

-Respondents-

**Site:** 57-00 47<sup>th</sup> Street, Maspeth, NY 11378;  
Queens County Tax Block 2601 Lots 1 & 6

**COMPLAINT**

**DEC FILE NO. R2-20061227-560**

The staff of the Region 2 office of the New York State of Department of Environmental Conservation ("Staff"), complaining of Respondents named in the caption above, alleges the following:

## JURISDICTION

1. The Department of Environmental Conservation ("the Department," "DEC" or "NYSDEC") is a department of the state of New York ("the State") with authority under section 3-0301 of the Environmental Conservation Law ("ECL") to enforce the environmental laws of the State and the rules, regulations and orders issued pursuant to that authority. Among other subject matters, DEC's jurisdiction includes the following:

2. Pursuant to Article 15 of the ECL and Part 608 of Title 6 of the Codes, Rules and Regulations of the State of New York ("NYCRR"), the Department has administrative jurisdiction over and is responsible for regulating the building of structures and the placement of fill in the waters of the State, as well as for the issuance of permits for such activities.

3. The Department has administrative jurisdiction over the abatement and prevention of pollution to the waters of the State pursuant to Article 17 of the ECL and 6 NYCRR Part 750, *et seq.*

4. This jurisdiction authorizes DEC, as a State agency with an approved program per Sections 318, 402 and 405 of the federal Clean Water Act ("CWA"), 33 U.S.C. Section 1251, *et seq.*, to regulate the discharge of pollutants from point sources into the waters of the State in conformity with the CWA.

5. Pursuant to this authority to protect the waters of the State, the Department administers the State Pollutant Discharge Elimination System ("SPDES") permit program, ECL §17-0801, *et seq.*, which encompasses a requirement for certain facilities to obtain coverage under a general permit for stormwater discharges.<sup>1</sup>

6. The Department has administrative jurisdiction over the management of tidal wetlands and tidal wetland adjacent areas of the State and thus regulates, among other activities, the placement of fill and other materials or structures therein by requiring permits for such activities pursuant to Article 25 of the ECL and 6 NYCRR Part 661.

7. Articles 27 and 71 of the ECL and Part 360 of 6 NYCRR provide the Department with administrative jurisdiction over the transportation, storage, treatment, and disposal of solid waste.

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<sup>1</sup> At all times relevant for this complaint the general permit applicable for the facility at issue was permit GP-98-03. Effective March 28, 2007, that general permit was replaced by general permit GP-0-06-002.

### **RESPONDENTS**

8. Respondent PEBBLE LANE ASSOCIATES, INC. is a domestic business corporation, having its principal executive office at 5700 47<sup>th</sup> Street, Maspeth, NY 11378-2105.

9. Respondent EMILIO LAMANNA is a corporate officer of respondent Pebble Lane Associates, Inc., who at all pertinent times has been involved in the day-to-day business activities of Pebble Lane Associates, Inc., including those that gave rise to the violations alleged in this complaint.

10. Respondent Emilio Lamanna is also the owner of one of the two parcels comprising the Site, as the term is used in this complaint, namely Block 2601 Lot 1.

11. Respondent TOMMY BROWN is an employee of respondent Pebble Lane Associates, Inc. who at all pertinent times served as site manager for the solid waste management facility on the Site.

12. Respondent ROSSANA BARTONE is a corporate officer of respondent Pebble Lane Associates, Inc., who at all pertinent times has been involved in the day-to-day business activities of Pebble Lane Associates, Inc., including those that gave rise to the violations alleged in this complaint.

13. Respondent MARY JEAN LAMANNA is a corporate officer of respondent Pebble Lane Associates, Inc., who at all pertinent times has been involved in the day-to-day business activities of Pebble Lane Associates, Inc., including those that gave rise to the violations alleged in this complaint.

14. Respondent 57-00 MASPETH AVENUE, LLC is a domestic business corporation, having its principal office at 5700 47<sup>th</sup> Street, Maspeth, NY 11378-2105.

15. Respondent 57-00 Maspeth Avenue, LLC is the owner of a waterfront parcel with a mailing address of 57-00 47<sup>th</sup> Street, Maspeth, NY 11378-2105, also identified as Queens County Block 2601 Lot 6.

### **THE SITE**

16. The "Site", as the term is used in this complaint, encompasses Queens County Block 2601 Lots 1 and 6.

17. Respondent Emilio Lamanna acquired lot 1 on December 16, 1986.

18. Respondent 57-00 Maspeth Avenue, LLC acquired lot 6 on April 30, 1998.

19. The Site abuts, and a portion of the Site extends into, Newtown Creek, which at the Site is mapped as a tidal wetland on the official tidal wetlands map number 590-506.

20. The Site encompasses an area of approximately 2.75 acres.

### FACTS

21. Lot 1 and the northern portion of lot 6 are used by the Respondents for the operation of a solid waste management facility, which measures slightly more than one acre in areal coverage.

22. The southern portion of the Site is used and occupied by Alfredo Lamanna Trucking, Inc.

23. Portions of the Site encompass a high marsh area, regulated under articles 15 and 25 of the ECL.

24. On January 5, 2005 Respondent Pebble Lane Associates, Inc., submitted a registration ("the Registration") for the operation of a solid waste management facility at the Site.

25. The registration form was signed by Respondent Rossana Bartone as "Vice President/Secretary."

26. The Registration was made pursuant to 6 NYCRR 360-12.1(d) and 360-16.1(d)(1)(I).

27. The Registration was marked as registration No. 41W64.

28. The Registration declared that the design capacity<sup>2</sup> of the facility was 7,500 cubic yards of fill/700 tons recyclables and the amount of solid waste that would be stored on the Site was to be no more than 7,500 cubic yards of fill/2,100 tons of recyclables.

29. On or about October 25, 2006, Respondents

a) stored approximately 10,000 cubic yards of solid waste on the Site in close proximity

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<sup>2</sup> 6 NYCRR §360-1.2(b)(8)

(approximately 25 feet) to surface water; and

- b) failed to maintain a minimum separation distance of 50 feet between piles and property boundaries without being authorized to do so by the Department, which failure continues to date.

30. On or before January 31, 2007, Respondents engaged in the following regulated activities at the Site without having a NYSDEC permit to do so;

- a) placement of fill, consisting of soil, sand, gravel, rocks, concrete, construction and demolition debris and similar material) in a regulated tidal wetland and tidal wetland adjacent area;
- b) removal of high marsh vegetation from a regulated tidal wetland;
- c) removal of vegetation from the tidal wetland adjacent area;
- d) construction of a retaining wall within the tidal wetland and tidal wetland adjacent area;
- e) operating a solid waste management facility within a regulated tidal wetland adjacent area without a permit pursuant to the Tidal Wetlands Act, which operation continues to date;
- f) operating a solid waste management facility under SIC Code 5093 without the required coverage under a SPDES Permit, which operation continues to date;
- g) allowing leachate from the solid waste management facility at the Site to migrate into surface water.



### APPLICABLE LAW

31. ECL §15-0505 and 6 NYCRR Part 608 prohibit the excavation and placement of fill in the navigable waters of the State or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the State and that are inundated at mean high water level or tide, without a permit from the DEC.

32. ECL §15-0107(4) defines “waters” to include, among other water bodies, “estuaries, marshes, inlets, canals, the Atlantic Ocean within the territorial limits of the state of New York, and all other bodies of surface or underground water, natural or artificial, inland or coastal, fresh or salt, public or private, which are wholly or partially within or bordering the state or within its jurisdiction.”

33. ECL § 71-1107 provides for a civil penalty of up to five thousand dollars (\$5,000) for each violation of section 15-0505 as well as criminal sanctions and injunctive relief.

34. ECL §25-0401 and 6 NYCRR § 661.8 prohibit regulated activities in a tidal wetland or regulated tidal wetland adjacent area without or in contravention of a permit from DEC.

35. 6 NYCRR §661.4(ee)(1) defines “regulated activity” to encompass, among other activities,

- a. “any form of [...] excavation or removal, either directly or indirectly, of soil, mud, sand , shells, gravel or other aggregate;”
- b. “any form of dumping, filling or depositing, either directly or indirectly, of any soil, stones, sand, gravel, mud, rubbish or fill of any kind;”
- c. “any portion of a subdivision of land located in any tidal wetland or adjacent area;”  
and
- d. “any other new activity within a tidal wetland or on an adjacent area which directly or indirectly may substantially alter or impair the natural condition or function of any tidal wetland.”

36. 6 NYCRR §661.4(ee)(2) states that “[r]egulated activity shall include, but not be limited to, any activity listed in subdivision (b) of section 661.5 of this Part as a generally compatible use-permit required (Gcp), presumptively incompatible use - permit required (Pip), incompatible use (I)

or permit required (P) for the applicable area. [...]"

37. 6 NYCRR 661.4(b)(1) defines "adjacent area" to encompass "any land immediately adjacent to a tidal wetland within whichever of the following limits is closest to the most landward tidal wetland boundary, as such most landward tidal wetlands boundary is shown on an inventory map (see explanatory figures 1-6):

- (I) 300 feet landward of said most landward boundary of a tidal wetland, provided, however, that within the boundaries of the city of New York this distance shall be 150 feet (see figure 1);

[...]

38. On the Site, the limit closest to the most landward tidal wetland boundary is the distance of 150 feet.

39. ECL §71-2503 authorizes the imposition of a civil penalty of up to ten thousand dollars (\$10,000) per day for each violation of Article 25 as well as injunctive relief.

40. ECL § 17-0807 and 6 NYCRR § 750-1.3 prohibit any discharge into the waters of the state not permitted by the provisions of Article 17 of the ECL, the rules and regulations adopted or applicable pursuant thereto, the Federal Water Pollution Control Act, or provisions of a permit issued pursuant to ECL Article 17.

41. ECL Section 71-1929 provides for a civil penalty of up to thirty-seven thousand five hundred dollars (\$37,500) per day for each violation of titles 1 through 11 inclusive and title 19 of Article 17, or the rules, regulations, orders or determinations of the Commissioner promulgated thereto.

42. ECL §27-0707 and 6 NYCRR Part 360 prohibit the construction or operation of a solid waste management facility without a permit from the DEC or in contravention of state permit or operational standards.

43. Pursuant to ECL §360-16.1(d) solid waste management facilities registering under that provision

"are subject to the registration provisions of subdivision 360-1.8(h) of this Part, rather than the permit requirements of this Part, provided all the applicable requirements of this Subpart and subdivision 360-1.8(h) of this Part are met."

44. 6 NYCRR §360-1.8(h)(9) provides that "registered facilities remain subject to the



operational requirements of subdivisions 360-1.14(b), (d), (e), (I), (j), (k), (l), (m), (p), ®, (s) and (w) of this Part.”

45. 6 NYCRR §360-1.14(b) contains the following operational requirements:

(b) Water.

(1) Solid waste must not be deposited in, and must be prevented from, entering surface waters or groundwaters.

(2) Leachate. All solid waste management facilities must be constructed, operated and closed in a manner that minimizes the generation of leachate that must be disposed of and prevent the migration of leachate into surface and groundwaters. Leachate must not be allowed to drain or discharge into surface water except pursuant to a State Pollutant Discharge Elimination System permit and must not cause or contribute to contravention of groundwater quality standards established by the department pursuant to ECL section 17-0301.

46. 6 NYCRR §§360-1.14(j) and 360-16.4(f)(1) require that

“[a]dequate storage space for incoming C&D debris must be available at the facility.”

47. 6 NYCRR §360-16.4(f) provides, in pertinent part:

“[...]a minimum separation distance of 50 feet must be maintained between piles and property boundaries unless otherwise authorized by the department.”

48. Pursuant to ECL §71-2703(1), any violation of 6 NYCRR Part 360 or any order issued thereunder subjects the violator(s) to a civil penalty of up to \$7,500 for each violation and an additional penalty of \$1,500 for each day the violation continues, as well as to criminal penalties and injunctive relief. Violations related to the laws and regulations involving waste transporter permits or solid waste management and resource recovery facilities may be sanctioned by a civil penalty of up to \$22,500 if they involve the release of ten cubic yards or more of solid waste in the environment. If construction and demolition debris is involved, an additional civil penalty of up to \$15,000 per day for each violation may be imposed pursuant to ECL §71-2703(3).

### **CAUSES OF ACTION**

49. For the purpose of the following causes of action, Staff repeat and re-allege each and every allegation contained in paragraphs 1 through 47 of this complaint as if fully set forth herein.

#### **FIRST CAUSE OF ACTION**

50. By storing approximately 10,000 cubic yards of solid waste on the Site in close proximity to surface water as set forth in paragraph 29.a above, Respondents violated their registration and 6 NYCRR §§360-16.4(f)(1); 360-1.14(j); 360-16.3(h)(4) and 360-16.4(b)(5).

#### **SECOND CAUSE(S) OF ACTION** (multiple counts)

51. By failing to maintain a minimum separation distance of 50 feet between piles and property boundaries, as set forth in paragraph 29.b above, without being authorized to do so by the Department, Respondents violated and continue to violate ECL §§360-16.1(d) and 6 NYCRR §360-16.4(f).

#### **THIRD CAUSE OF ACTION**

52. By placing fill, consisting of soil, sand, gravel, rocks, concrete, construction and demolition debris and similar material in a tidal marsh that is adjacent and contiguous to a navigable water of the state regulated tidal wetland and tidal wetland adjacent area as set forth in paragraph 30.a above, Respondents violated ECL §25-0401 and 6 NYCRR § 661.8.

#### **FOURTH CAUSE OF ACTION** (two counts)

53. By placing fill, consisting of soil, sand, gravel, rocks, concrete, construction and demolition debris and similar material in a regulated tidal wetland without a DEC permit as set forth in paragraph 30 a and g above, Respondents violated ECL §15-0505(1) and 6 NYCRR § 608.5.

#### **FIFTH CAUSE OF ACTION**

54. By removing high marsh vegetation from a regulated tidal wetland as set forth in paragraph 30.b above, Respondents violated ECL §25-0401 and 6 NYCRR § 661.8.

#### **SIXTH CAUSE OF ACTION**

55. By removing vegetation from the regulated tidal wetland adjacent area as set forth in paragraph 30.c above, Respondents violated ECL §25-0401 and 6 NYCRR § 661.8.

#### **SEVENTH CAUSE OF ACTION**

56. By constructing a retaining wall within the tidal wetland and tidal wetland adjacent area as set forth in paragraph 30.d above, Respondents violated ECL §25-0401 and 6 NYCRR § 661.8.

#### **EIGHTH CAUSE OF ACTION**

(multiple counts)

57. By operating a solid waste management facility within a regulated tidal wetland adjacent area without a permit pursuant to the Tidal Wetlands Act as set forth in paragraph 30.e above, Respondents violated and continue to violate ECL §25-0401 and 6 NYCRR § 661.8.

#### **NINTH CAUSE OF ACTION**

(multiple counts)

58. By operating a solid waste management facility under SIC Code 5093 without having obtained coverage which failed to have the required coverage under a SPDES Permit (GP-98-03 and GP-0-06-002, respectively, or, in the alternative, an individual SPDES permit) as set forth in paragraph 30.f above, Respondents violated and continue to violate ECL § 17-0807 and 6 NYCRR § 750-1.3.

#### **TENTH CAUSE OF ACTION**

59. By allowing leachate from the solid waste management facility at the Site to migrate into surface water as set forth in paragraph 30.g above, Respondents violated ECL §27-0707 and 6

NYCRR §§ 360-16.1(d), 360-16.4(g), 360-1.8(h), and 360-1.14(b).

### ELEVENTH CAUSE OF ACTION

60. By allowing leachate from the solid waste management facility at the Site to migrate into surface water as set forth in paragraph 30.g above, Respondents violated ECL § 17-0807 and 6 NYCRR § 750-1.3.

**WHEREFORE**, Staff respectfully requests on Order of the Commissioner which:

- a. Finds that the Respondents violated the ECL and rules and regulations issued pursuant thereto as delineated in this complaint;
- b. Requires Respondents to cease the operation of the solid waste management facility on the Site and close it in compliance with all applicable laws and regulations.
- c. Requires Respondents to remove all unauthorized fill from the regulated tidal wetland and tidal wetland adjacent area on the Site and to restore the Site to the satisfaction of DEC staff.
- c. Imposes, pursuant to ECL §§71-1107, 71-1929, 71-2503 and 71-2703 a civil penalty upon the Respondents for each violation alleged herein, calculated on a daily basis where both authorized by law and proven at the hearing of this matter and holding Respondents jointly and severally liable for such penalties;
- d. Orders Respondents to cease and desist from any and all future violations of the ECL and rules or regulations promulgated pursuant thereto; and
- e. Orders such other and further relief as may be just and proper.

Dated: Long Island City, New York  
February 13, 2008



Udo M. Drescher  
Assistant Regional Attorney  
New York State Department of  
Environmental Conservation,  
Region 2

One Hunter's Point Plaza  
47-40 21st Street  
Long Island City, New York 11101  
(718) 482-4963

**By certified mail/ RRR to:**

Pebble Lane Associates, Inc.  
5700 47<sup>th</sup> Street  
Maspeth NY 11378-2105  
(7006 2760 0004 0383 2750)

Emilio Lamanna  
c/o Pebble Lane Associates, Inc.  
5700 47<sup>th</sup> Street  
Maspeth NY 11378-2105  
(7006 2760 0004 0383 2767)

Tommy Brown  
c/o Pebble Lane Associates, Inc.  
5700 47<sup>th</sup> Street  
Maspeth NY 11378-2105  
(7006 2760 0004 0383 2774)

Rossana Bartone  
c/o Pebble Lane Associates, Inc.  
5700 47<sup>th</sup> Street  
Maspeth NY 11378-2105  
(7006 2760 0004 0383 2781)

Mary Jean Lamanna  
c/o Pebble Lane Associates, Inc.  
5700 47<sup>th</sup> Street  
Maspeth NY 11378-2105  
(7006 2760 0004 0383 2934)

57-00 Maspeth Avenue, LLC  
5700 47<sup>th</sup> Street  
Maspeth NY 11378-2105  
(7006 2760 0004 0383 2941)

**STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

In the Matter of the Alleged Violation of Articles  
15, 17, 25 and 27 of the New York State  
Environmental Conservation Law and Parts 360,  
608, 661 and 750 of Title 6 of the Official  
Compilation of Codes, Rules and Regulations of the  
State of New York

-by-

**PEBBLE LANE ASSOCIATES, INC.**

and

**EMILIO LAMANNA** personally and as  
corporate officer of Pebble Lane Associates, Inc.

and

**MARY JEAN LAMANNA** personally and as  
corporate executive officer of Pebble Lane  
Associates, Inc.

and

**TOMMY BROWN.**

and

**ROSSANA BARTONE** personally and as  
corporate officer of Pebble Lane Associates, Inc.

and

**57-00 MASPETH AVENUE, LLC**

-Respondents-

**Site:** 57-00 47<sup>th</sup> Street, Maspeth, NY 11378;  
Queens County Tax Block 2601 Lots 1 & 6

**NOTICE OF HEARING**

**DEC FILE NO. R2-20061227-560**

**WARNING: FAILURE TO ANSWER WILL RESULT IN A DEFAULT  
AND A WAIVER OF RESPONDENT'S RIGHT TO A HEARING.**

**PLEASE TAKE NOTICE**, that pursuant to Articles 15, 17, 25 and 27 of the Environmental Conservation Law (ECL) and Parts 360, 608, 661 and 750 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR), a public hearing shall be convened on a date which will be set by the Office of Hearings upon the filing of a *statement of readiness for adjudicatory hearing* as set forth in 6 NYCRR 622.9, to consider certain violations Respondents are charged with having committed, specifically violations of sections 15-0505, 17-0807, 25-0401 and 27-0707 of the ECL and 6 NYCRR §§ 360-1.8(h); 360-1.14(b); 360-1.14(j); 360-16.1(d); 360-16.3(h)(4); 360-16.4(b)(5); 360-16.4(g); 360-16.4(f)(1); 608.5; 661.8; and 750-1.3.

**PLEASE BE ADVISED**, that each Respondent must serve a written answer to the attached Complaint on the attorney who has signed this Notice of Hearing **within twenty (20) days** of receipt of this Notice of Hearing, in accordance with the provisions of 6 NYCRR 622.4, specifying which allegations Respondent admits, which allegations Respondent denies, and which allegations Respondent has insufficient information upon which to form an opinion regarding the allegation; **that any affirmative defenses, including exemptions to permit requirements, will be waived unless raised in the answer; that failure to serve an answer as provided above will result in a default and a waiver of Respondent's right to a hearing;** that Respondent must appear at the hearing in person or by representative, with or without counsel; that all witnesses will testify under oath and a record of the proceeding will be made; that Respondent may request issuance of subpoenas to compel attendance of witnesses and production of records relative to the matter; that Respondent may cross-examine witnesses and examine evidence produced against Respondent.

**PLEASE TAKE NOTICE**, that the hearing will be convened whether or not Respondent appears, and should Respondent be found to have violated the aforementioned statutes and regulation, an Order will be issued assessing penalties upon Respondent and/or directing other and further relief. Any penalties assessed upon Respondent shall be in accordance with the provisions of §§71-1107, 71-1929, 71-2503 and 71-2703 of the ECL. The assessment of penalties shall not preclude the New York State Department of Environmental Conservation ("the Department") from taking other appropriate and authorized legal and/or administrative action. Respondent may waive his/her right to a public hearing and agree to the issuance of an Order on Consent.

**PLEASE TAKE FURTHER NOTICE**, that you are required to attend a pre-hearing conference which will be held at the following time and place:

**DATE:** Thursday, March 27, 2008

**TIME:** 11:00 A.M.

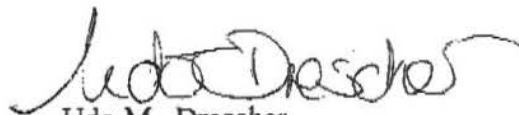
**PLACE:** One Hunter's Point Plaza, Second Floor  
47-40 21st Street  
Long Island City, NY

**Failure to attend the pre-hearing conference at the time and place set forth above will result in a default and waiver of the respective Respondent's right to a hearing.**

Interpreter services shall be made available to deaf persons, at no charge, upon written request to the contact person named below within a reasonable time prior to the hearing(s) pursuant to SAPA Section 202 (1).

The above address is reasonably accessible to persons with a mobility impairment.

Dated: Long Island City, New York  
February 13, 2008



Udo M. Drescher  
Assistant Regional Attorney  
New York State Department of  
Environmental Conservation,  
Region 2  
One Hunter's Point Plaza  
47-40 21st Street  
Long Island City, New York 11101  
(718) 482-4963



**DEC v. Pebble Lane Associates, Inc.; Emilio Lamanna; Mary Jean Lamanna; Tommy Brown;  
Rossana Bartone and 57-00 Maspeth Avenue, LLC  
DEC File No. R2-20061227-560**

**Notice of Hearing**

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To:

**By certified mail/ RRR to:**

Pebble Lane Associates, Inc.  
5700 47<sup>th</sup> Street  
Maspeth NY 11378-2105  
(7006 2760 0004 0383 2750)

Emilio Lamanna  
c/o Pebble Lane Associates, Inc.  
5700 47<sup>th</sup> Street  
Maspeth NY 11378-2105  
(7006 2760 0004 0383 2767)

Tommy Brown  
c/o Pebble Lane Associates, Inc.  
5700 47<sup>th</sup> Street  
Maspeth NY 11378-2105  
(7006 2760 0004 0383 2774)

Rossana Bartone  
c/o Pebble Lane Associates, Inc.  
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5700 47<sup>th</sup> Street  
Maspeth NY 11378-2105  
(7006 2760 0004 0383 2941)



PBS Number  
2-318744

New York State Department of Environmental Conservation

# PETROLEUM BULK STORAGE CERTIFICATE

625 Broadway, 11th Floor, Albany, NY 12233-7020 Phone: 518-402-9553

One Hunters Point Plaza, 1st Floor  
47-40 21st Street, L.I. City, NY 11101-6454  
(718) 482-6454

TANK NUMBER	TANK LOCATION	DATE INSTALLED	TANK TYPE	CAPACITY (GALLONS)	DATE LAST TESTED	TESTING DUE DATE
001	Underground	10/01/1985	Fiberglass Reinforced Plastic (FRP)	4,000	12/21/2007	12/21/2012

\* Aboveground tanks require monthly visual inspections and may need documented internal inspections as described in 6 NYCRR Part 613

**OWNER:**  
5700 MASPETH AVENUE, LLC  
5700 47TH STREET  
MASPETH, NY 11378

**SITE:**  
ISLAND TRANS CORP  
57-00 47TH STREET  
5700 47TH ST  
MASPETH, NY 11378

**OPERATOR:** RAY BEDFORD  
(718) 821-6900  
**EMERGENCY CONTACT:** RAYMOND BEDFORD  
(718) 821-6900

## MAILING CORRESPONDENCE:

**ISSUED BY:** Commissioner  
Alexander B. Grannis  
**PBS NUMBER:** 2-318744  
**DATE ISSUED:** 12/30/2003  
**EXPIRATION DATE:** 12/16/2008  
**FEE PAID:** \$500.00

MARY JEAN LAMANNA  
5700 MASPETH AVENUE, LLC  
5700 47TH STREET  
MASPETH, NY 11378

As an authorized representative of the above named facility, I affirm under penalty of perjury that the information displayed on this form is correct to the best of my knowledge. Additionally, I recognize that I am responsible for assuring that this facility is in compliance with all sections of 6 NYCRR Parts 612, 613 and 614, and applicable sections of 6 NYCRR Subpart 360-14 (used oil tanks only), not just those cited below:

- The facility must be re-registered if there is a transfer of ownership.
- The Department must be notified within 30 days prior to adding, replacing, reconditioning, or permanently closing a stationary tank.
- The facility must be operated in accordance with the code for storing petroleum, 6NYCRR Part 613.
- Any new facility or substantially modified facility must comply with 6NYCRR Part 614.
- This certificate must be signed and posted on the premises at all times. Posting must be at the tank, at the entrance of the facility, or the main office where the storage tanks are located.
- Any person with knowledge of a spill, leak or discharge must report the incident to DEC within two hours (1-800-457-7362).

Signature of Representative/ Owner

Date

Name and Title of Authorized Representative/Owner (Please Print)

**General Liability**

**7**

2005-2006	American Safety
2006-2007	American Safety
2007-2008	American Safety
2008-2009	American Safety
2009-2010	Scottsdale
2010-2011	Scottsdale
2011-2012	Scottsdale
2012-2013	Scottsdale